

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID EICHENLAUB

Plaintiff,

and

Civil Action No. 99-1607 **LEAD**
(Consolidated with 99-1667)

DANIEL EICHENLAUB and

BARBARA EICHENLAUB,

Consolidated Plaintiffs,

v.

TOWNSHIP OF INDIANA,

TOWNSHIP OF INDIANA BOARD OF SUPERVISORS,

JEFFREY D. PECK, in his individual capacity,

TOWNSHIP OF INDIANA CODE ENFORCEMENT

OFFICER, JEFFREY S. CURTI, in his official capacity,

Defendants.

ORDER OF COURT

After consideration of Defendants' Motion for Appellate Attorneys' Fees and Costs (doc. no. 280) and supporting Memorandum of Law (doc. no. 281); and Plaintiffs' Opposition to Defendants' Motion for Appellate Attorneys' Fees and Costs (doc. no. 282) and Brief in Opposition (doc. no. 283); and based upon this Court's intimate familiarity with this litigation over an extended period of time (including over 280 docket entries, a jury trial, post-trial motions, and appeals), said Motion (doc. no. 280) is DENIED.

Defendants seek "appellate attorneys' fees and costs pursuant to the Civil Rights Attorney's Fee Award Act of 1976, 42 U.S.C. § 1988, and F.R.C.P. 54(d)(2)." However, the standard for recovery by a prevailing defendant is more stringent than for a prevailing plaintiff in Section 1983 litigations - - the standard is "frivolous, unreasonable or groundless."

Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978), *Barnes Found. v. Twp. of Lower Merion*, 242 F.3d 151 (3d Cir. 2001); *Commonwealth of Pa. v. Flaherty*, 40 F.3d 57 (3d Cir.

1994); *Brown v. Borough of Chambersburg*, 903 F.2d 274 (3d Cir. 1990); *U.S. Steel Corp. v. United States*, 519 F.2d 359 (3d Cir. 1975). This Court has reviewed the Opinion of the United States Court of Appeals for the Third Circuit and finds nothing to indicate that Court considered plaintiffs' cross-appeal to be frivolous, unreasonable, or groundless, nor does this Court so find. *Eichenlaub v. Township of Indiana*, 05-2476 and 05-2498, Unpublished Opinion dated January 25, 2007, Mandate Filed March 5, 2007 (doc. no. 279). On the contrary, counsel for plaintiff raised issues on appeal that were well-taken and worthy of appellate review. Thus defendants have failed to establish their entitlement to appellate attorneys' fees and costs.

SO ORDERED this 4th day of April, 2007.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All counsel of record